

REMARKS

1. The claims stand objected to because there are two occurrences of claims 134 and 135.

In response, the second occurrence of claims 134 and 135 and claims 136-153 have been consecutively renumbered pursuant to 37 CFR 1.75 as claims 136-155. Accordingly, withdrawal of this objection is respectfully requested.

2. Claims 1-153 stand subject to a restriction or election requirement. In support of the requirement, the Examiner states:

I. Claims 1-135 (1st recited claims 134 & 135) are drawn to a protective laminated, breathable pad, classified in class 2, subclass 455.

II. Claims 134-151 (2nd recited claims 134 and 135) are drawn to a shell having a plurality of discrete panels, classified in class 2, subclass 44.

III. Claim 152 is drawn to a body shell being colored, classified in class 2, subclass 456.

IV. Claim 153 is drawn to a shoulder shell having a spring, classified in class 2, subclass 459.

The Examiner further states:

The inventions are distinct, each from the other because of the following reasons:

Inventions I, II, III, and IV are unrelated to one another. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions I, II, III, and IV are unrelated, since invention I pertains to a laminated pad, while invention II pertains to a shell having separate panels, invention III pertains to a colored shell and invention IV pertains to a shoulder shell having a spring. ...Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

In response, Applicant provisionally elects, with traverse, invention I, claims 1-135 for prosecution on the merits. The restriction is traversed because the Examiner has not shown how the inventions of groups I, II, III, and IV are “distinct” or “unrelated” from one another. Further, the Examiner appears to be confusing “distinct” inventions with “unrelated” or “independent” inventions.

MPEP § 802.01 states that the term “distinct” means that “two or more subjects as disclosed are related...but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER (though they may each be patentable because of prior art).”

The term “independent” is defined by MPEP § 802.01 as “no disclosed relationship between the two or more subjects disclosed...” MPEP § 806.04 provides examples of independent inventions, i.e., “An article of apparel such as a shoe, and a locomotive bearing would be an example. A process of painting a house a process of boring a well would be a second example.”

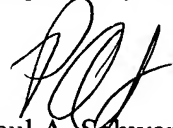
In view of the above, Applicant respectfully submits that the rationale for the Examiner’s restriction is improper. First, the Examiner has not shown how the inventions of groups I, II, III, and IV are distinct from one another, i.e., capable of separate manufacture, use, or sale as claimed, etc. Moreover, the Examiner has not really shown how the invention of groups I, II, III, and IV are independent. The protective pad apparatus of claim 1 (group I) comprises a shell assembly, claim 134 (group II) is directed to a shell assembly, claim 152 (group III) is directed to a shell assembly, and claim 153 (group IV) is directed to a shell assembly. In addition, the shell assemblies of the groups I, II, III, and IV inventions are connected in design, operation, and effect. In fact the shell assemblies of groups I, II, III, and IV are so connected that the Examiner

states they are all classified in class 2. If the inventions of groups I, II, III, and IV were actually independent, they would not be classified in the same class.

Accordingly, withdrawal of the restriction requirement is respectfully requested.

3. The Commissioner is hereby authorized to charge payment of any additional filing fees required under 37 CFR 1.16 and any patent application processing fees under 37 CFR 1.17, which are associated with this communication, or credit any overpayment to Deposit Account No. 50-2061.

Respectfully submitted,



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